



02-CV-01683-CMP

FILED ENTERED
LODGED RECEIVED

SEP 30 2003

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VALVE CORPORATION, a Washington
corporation,

Plaintiff,

v.

SIERRA ENTERTAINMENT, INC. (AKA
SIERRA ON-LINE, INC.), a Delaware
corporation; VIVENDI UNIVERSAL
GAMES, INC., a Delaware corporation; and
VIVENDI UNIVERSAL, S.A., a French
foreign corporation

Defendants.

Civil Action No. CV02-1683

FIRST AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT AND
BREACH OF CONTRACT

Jury Trial Demanded

Plaintiff Valve Corporation ("Valve") hereby alleges as follows:

I. JURISDICTION AND VENUE

1. This is an action for copyright infringement under the Copyright Act, 17 U.S.C. § 501 *et. seq.*, and an action for breach of contract under Washington law.

2. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331, 1332,

1 and 1338. This court has personal jurisdiction over Defendants Sierra Entertainment, Inc., Vivendi
2 Universal Games and Vivendi Universal because they conduct business in this judicial district and
3 consented to the jurisdiction of this Court in the agreement with Valve out of which this action
4 arises. This Court also has jurisdiction for causes of action arising under Washington law under the
5 Supplemental Jurisdiction Statute, 28 U.S.C. § 1367, because these state law causes of action form
6 part of the same case or controversy under Article III of the United States Constitution.

7 3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

8 II. THE PARTIES

9 4. Valve is a Washington corporation maintaining its principal place of business in
10 Bellevue, Washington. Valve is one of the world's leading developers of computer software games,
11 including such titles as "Half-Life," "Counter-Strike," "Blueshift," "Gunman Chronicles," and
12 "Team Fortress," (hereinafter collectively referred to as "Valve Games"). The Valve Games have
13 received numerous awards and accolades within the gaming industry, including "Game of the Year"
14 awards for Valve's Half-Life game by over fifty industry periodicals and online publications.

15 5. Sierra is a Delaware corporation, maintaining its principal place of business at 3060
16 139th Ave. SE, #500, Bellevue, WA, 98005. Sierra is a publisher of computer software games and
17 publishes some of Valve's game titles, including the Valve Games. Sierra is a wholly owned
18 subsidiary of Vivendi Universal Games, Inc.

19 6. Vivendi Universal Games, Inc. ("Vivendi Games") is a Delaware corporation, with its
20 principal place of business in Los Angeles, California. Vivendi Games is a subsidiary of Vivendi
21 Universal, SA.

22 7. Vivendi Universal, S.A. ("Vivendi") is a French corporation. Vivendi Universal is
23 the parent corporation of Vivendi Games and Sierra.

24 8. When referred to collectively herein, Vivendi and Vivendi Games will be referred to
25 as "Vivendi Companies." In March of 2002 Valve entered into a Software Publishing Agreement
26

1 (“Agreement”) with Sierra and its “Affiliates.” The Agreement provides that its terms bind Sierra
 2 and its Affiliates. The Agreement defines “Affiliates” as “any entity that, directly or indirectly, or
 3 through one or more intermediaries, owns, is owned by, or is under common ownership with, such
 4 specific entity.” See Agreement § 1. The Vivendi Companies are all Affiliates of Sierra under the
 5 Agreement and are bound by its terms. All Vivendi Companies have done business in this District
 6 and agreed to jurisdiction and venue in this District for any action arising out of the Agreement.
 7

8 III. STATEMENT OF FACTS

9 9. On March 29, 2001, Valve and Sierra and the Vivendi Companies entered into the
 10 Agreement. Under the Agreement Valve granted a limited license to reproduce, use, distribute, and
 11 license certain computer games created by Valve (“Valve Games”) in return for royalty payments
 12 and other consideration. Under the Agreement Sierra’s license to reproduce, use, distribute, and
 13 license the Valve Games only in retail channels as “Retail Packaged Products.”

14 10. All of the Valve Games at issue contain proprietary software code commonly referred
 15 to as the Valve Engine. Valve is the owner of the copyrights in the Valve Engine. (Copyright Reg.
 16 TX 5-445-241, July 24, 2001). Valve also holds valid Copyright Registrations in Valve Games
 17 known as “Half-Life” (Copyright Reg. PA 915-913 January 28, 1999) and “Half-Life Day One”
 18 (Copyright Reg. PA 901-764, October 29, 1998) (Certificates of Recordation Vol. 3470 Pages 546
 19 and 547, June 8, 2001). See Attached Exhibit A.

20 11. Sierra and the Vivendi Companies, directly and through their agents, have reproduced
 21 one or more of the Valve Games and distributed them to internet cafés” and/or “cyber cafés” in the
 22 United States and elsewhere. Cyber cafés are for-profit multi-player facilities that make computers
 23 available for use to the general public upon payment of an hourly fee for such use. Reproducing,
 24 using, distributing, and/or licensing the Valve Games to cyber cafés is not within the scope of license
 25 granted in the Agreement and constitutes copyright infringement.
 26

1 12. The natural, probable, and foreseeable result of this infringing conduct by Sierra and
2 the Vivendi Companies has been and will continue to be to deprive Valve of the benefits of
3 reproducing, using, distributing, and/or licensing the Valve Games and to deprive Valve of
4 opportunities to expand goodwill associated with the Valve Games. Defendants have also unjustly
5 profited from such activity.

6 13. In the alternative, the reproduction, use, distribution, and/or licensing of the Valve
7 Games to cyber cafés by Sierra and the Vivendi Companies in the United States and abroad was and
8 is also a breach of the Agreement.

9 14. As set forth in the Agreement, Sierra and the Vivendi Companies promised that
10 copies of Retail Packaged Product Valve Games would be distributed only with end-user license
11 agreements approved in advance by Valve. See Agreement § 4.1.2. Without Valve's prior
12 knowledge Sierra and the Vivendi Companies and their agents distributed and entered into
13 multiple-seat license agreements for commercial use of the Valve Games in cyber cafés worldwide.
14 Valve did not approve any end-user license agreements that would permit Valve Games to be played
15 in cyber cafés and such distribution is not licensed under the Agreement.

16 15. As set forth in the Agreement, Sierra and the Vivendi Companies promised that, in
17 the event they learned of any potential infringement regarding the Valve Games, they would
18 promptly notify Valve of the same. Sierra and the Vivendi Companies further promised that, if
19 requested by Valve to do so, they would cooperate in all respects in any action that Valve deemed
20 advisable for the protection of Valve's rights in and to the Valve Games. See Agreement § 4.4.
21 Although requested to do so by Valve with respect to activities in the Philippines, Malaysia, and
22 Germany, Sierra and the Vivendi Companies have refused to cooperate with Valve in enforcing
23 Valve's rights as required by the Agreement.

24 16. As set forth in the Agreement, Valve retained the sole authority to negotiate and
25 execute agreements for sales of Non-Retail Software Products and Traditional OEM Products. See
26

1 Agreement § 2.8. Sierra and the Vivendi Companies and their agents negotiated and entered into
2 agreements with distributors worldwide under which defendants purported to grant the right to
3 distribute Valve Games as Traditional OEM Products. Some of these agreements were for the
4 known purpose of supplying OEM Valve Games to cyber cafés. Sierra and the Vivendi Companies
5 were not authorized to grant any such license to the Valve Games.

6 17. As set forth in the Agreement, Sierra and the Vivendi Companies promised that they
7 would conduct their businesses so as to reflect favorably on the reputation of the other party and not
8 invade its good will. See Agreement § 9.2. Sierra and the Vivendi Companies also promised that
9 they would not conduct any business or arrangement directly or indirectly through any Affiliate that
10 would result in Sierra and the Vivendi Companies avoiding the intent, terms and conditions of the
11 Agreement. Sierra and the Vivendi Companies failed to honor these provisions of the Agreement.
12 See Agreement § 9.11.

13 18. Prior to the commencement of this action, Valve demanded that Sierra and the
14 Vivendi Companies and agents cease and desist from any licensing of the Valve Games to cyber
15 cafés. Sierra represented to Valve that it was no longer licensing Valve products to cyber cafés
16 worldwide. This representation was false and in fact Sierra and the Vivendi Companies continued to
17 license Valve Games to cyber cafés.

18 19. Sierra, the Vivendi Companies and their agents have entered into numerous cyber
19 café licenses which exceed the scope of the Agreement, breach the Agreement, and caused damage
20 to Valve. For example, on November 1, 2002, Vivendi Universal Games, Inc. entered into two
21 agreements with a Philippine corporation known as Asian Media Development Group ("AMDG")
22 purporting to authorize AMDG to distribute and license Valve's game "Counter-Strike" and separate
23 Vivendi game titles (Diablo II, Starcraft, Alien v. Predator 2, Empire Earth, and War Craft III) to
24 cyber cafés in the Philippines.

25 20. As of July 2, 2002, AMDG advertised commercial site licenses for Counter-Strike
26

1 and the Sierra Games on its website as follows:

2 AMDG offers Commercial Site Licenses for Blizzard & Sierra Games!

3 Network Gaming Centers may now enjoy playing Vivendi Universal Games
4 legitimately. AMDG now offers a promotional Commercial Site Licenses
5 STARTER PACK for Blizzard & Sierra award winning games. Included in
6 this package are the new hit games "Warcraft III: Reign of Chaos" and the
phenomenal "Half-Life: Counter Strike".

7 Along with these FREE titles "Aliens vs. Predator", "Empire Earth", "Diablo
8 II" and "StarCraft".

9 21. By means of the agreements with AMDG, Sierra and the Vivendi Companies
10 attempted to conceal from Valve the purpose and effect of the agreements that it entered into with
11 AMDG. Although the purpose and effect of the deal underlying the two International Distributor
12 Agreements was to provide AMDG with products that it could license to cyber cafés for Vivendi, the
13 International Distributor Agreement for CounterStrike was purposely crafted to avoid the appearance
14 that Vivendi had done so.

15 22. The natural, probable, and foreseeable result of Sierra's unauthorized distribution of
16 Valve games and breaches of the Agreement has been and will continue to be to deprive Valve of the
17 benefits of the Agreement and to deprive Valve of opportunities to expand goodwill associated with
18 the Valve Games. Sierra and the Vivendi Companies have also unjustly profited from such activity.

19 COUNT I

20 COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. §501

21 23. Plaintiff realleges paragraphs 1-24 of this Complaint as if fully set forth herein.

22 24. Valve is the owner of the registered copyrights for the Valve Engine, Half-Life, and
23 Half-Life Day One.

24 25. The Valve Games are built on and incorporate the Valve Engine.

25 26. Sierra and the Vivendi Companies have in the past and continues to reproduce, use,
26 distribute, and/or license one or more of the Valve Games with regard to "cyber cafés." Sierra's

1 activities are outside the scope of Defendant's limited license to reproduce, use, distribute, and/or
2 license the Valve Games as Retail Packaged Products, and therefore constitute copyright
3 infringement in violation of the Copyright Act of 1976, 17 U.S.C. §106.

4 27. This infringing activity has caused continuing harm to Valve, for which there is no
5 adequate remedy at law, and will also cause monetary damages.

6 **COUNT II**

7 **BREACH OF CONTRACT**

8 28. Plaintiff realleges paragraphs 1-29 of this Complaint as if fully set forth herein, and in
9 the alternative alleges:

10 29. Valve has performed all its obligations under the Agreement.

11 30. Sierra and the Vivendi Defendant's reproduction, use, distribution, and/or licensing of
12 one or more of the Valve Games with regard to cyber cafés in the United States and abroad was a
13 breach of the Agreement.

14 31. Sierra and the Vivendi Defendant's distribution of Valve games for use in cyber cafés
15 with end-user license agreements that were not approved by Valve was a breach of the Agreement.

16 32. Sierra and the Vivendi Companies breached the Agreement by failing to notify Valve
17 of infringement or cooperate with Valve in its attempts to stop infringement of its copyright.

18 33. Sierra and the Vivendi Companies breached the Agreement by entering into
19 agreements with distributors that permitted Valve Games to be installed as Traditional OEM
20 Product.

21 34. Sierra and the Vivendi Companies breached the Agreement by entering into licensing
22 agreements with cyber cafés to allow multi-player use of Valve games without the sale of Retail
23 Packaged Product.

24 35. Sierra and the Vivendi Companies breached the Agreement by failing to use
25 commercial best efforts to maximize sales of Valve games by undermining the market for Valve
26

1 games and by failing to charge a reasonable market price for the games.

2 36. Sierra and the Vivendi Companies have breached the implied covenant of good faith
3 and fair dealing by engaging in a course of conduct intentionally designed to prevent Valve from
4 obtaining its rights and benefits under the Agreement.

5 37. Sierra and the Vivendi Companies have breached the Agreement by distributing the
6 Valve Games under license agreements that were not approved by Valve.

7 38. Sierra and the Vivendi Companies breached the Agreement by failing to conduct its
8 business so as not to injure Valve's reputation and goodwill.

9 39. Sierra and the Vivendi Companies breached the Agreement by conducting business
10 through Affiliates in an attempt to hide their actions from Valve and thereby avoid or bypass the
11 intent and terms of the Agreement.

12 40. As a direct and proximate result of Sierra and the Valve Defendant's breach of the
13 Agreement, Valve has been damaged in an amount to be proven at trial, but in excess of the statutory
14 minimums.

15
16 WHEREFORE, Plaintiff respectfully prays that this Court:

17 1. Issue a permanent injunction, enjoining and prohibiting defendants and their agents,
18 servants employees, officers, attorneys, successors and assigns from reproducing, using, distributing,
19 and/or licensing the Valve Games with regard to internet cafés, cyber cafés, or any other multi-
20 player facility;

21 2. Require defendants to account to Valve for all profits and damages resulting from the
22 activities complained of in this Complaint;

23 3. Order an award of attorneys' fees and costs to Valve as provided by § 505 of the
24 Copyright Act, or as otherwise provided by the law;

25 4. Award Valve its attorneys fees and costs incurred herein as provided by the parties'
26

1 Agreement.

2 5. An award of compensatory damages in an amount to be proved at trial, or in the
3 alternative, for an award of statutory damages; and

4 6. For such other and further relief as this Court deems appropriate.

5 **IV. JURY DEMAND**

6 Plaintiff hereby demands a trial by jury of all issues in this case.

7 DATED this 23rd day of September, 2003.

8 PRESTON GATES & ELLIS LLP

9
10 By 

Karl J. Quackenbush, WSBA #9602

11 Jason P. Holtman, WSBA #28233

12 Attorneys for Plaintiff

13 Valve Corporation
14
15
16
17
18
19
20
21
22
23
24
25
26